

REMARKS/ARGUMENTS

Claims Status

Claims 1, 3-10 and 12-19 are pending. Claims 1 and 10 are currently amended.

Claims 2 and 11 were previously canceled without prejudice. Independent claims 1 and 10 are amended to recite “said emulsified cosmetic composition is an oil-in-water emulsion” pursuant to page 31, last paragraph, of the specification. No new matter is believed to have been entered.

Non-Statutory Double Patenting Rejections

The pending claims have been rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over U.S. Application No. 10/534,753.

Applicants note that an Office Action (issued on August 26, 2009) in US 10/534,753 has not been responded to in a timely fashion. Accordingly, as it appears that a response to said Office Action in 10/534,753 will not be forthcoming, the status in the Patent Office’s electronic system (i.e., PAIR) should indicate 10/534,753 as abandoned. Accordingly, as US 10/534,753 is not currently pending, Applicants request withdrawal of this rejection pursuant to MPEP 804 (Part IC).

§103(a) Rejection

The claimed invention remains rejected as obvious in view of the combination of Masashi (AU-B-25757/95) and Otsuka. Applicants respectfully traverse this rejection.

The claimed invention relates to an emulsified cosmetic composition comprising surface-hydrophobated water-absorbing polymer particles and water, wherein said emulsified cosmetic composition is an **oil-in-water emulsion**, and wherein said surface-hydrophobated water-absorbing particles comprise (a) a crosslinked polymer (see independent claim 1 - in

part) or (b) a polymer or copolymer of hydrophilic vinyl monomers (see independent claim 10 - in part).

Applicants' specification explains that enhanced water/sweat absorptivity is obtained when the claimed emulsified cosmetic composition is of the oil-in-water ("O/W") type (see paragraph bridging pages 31-32). In addition and more specifically, the specification states that the O/W type of the claimed composition "spreads well, gives refreshing feel and improves antiperspiring performance" and that the "emulsified cosmetic composition is preferably the O/W type particularly for recovery of water absorptivity of the surface-hydrophobated water-absorbing polymer particles by evaporation of water from the surface-hydrophobated water-absorbing polymer particles in the emulsified cosmetic composition of the present invention" (Id.).

In contrast to the claimed invention, the cosmetic emulsions of Otsuka are only of the water-in-oil ("W/O") type (see e.g., page 1, first full sentence). Furthermore it is noted that Masashi does not disclose cosmetic *emulsions*. This lack of disclosure of cosmetic emulsions has been recognized by the Office (Office Action, page 4) and is further evidenced by the Office's own assertion that one skilled in the art could have used the water-absorbing polymer particles of Masashi in the *cosmetic emulsion formulations of Otsuka* (Office Action, page 5). Accordingly, Applicants submit that a combination of Masashi and Otsuka would produce a W/O type emulsified cosmetic composition, **not** an O/W type emulsified cosmetic composition as claimed. As such, the combination of Otsuka and Masashi does not disclose or suggest the claimed invention.

Furthermore, it is noted that *W/O* emulsions containing conventional water-absorbing polymers to absorb sweat, like those of Otsuka, suffer from unpleasant feelings on the skin such as a sticky feeling and a slimy feeling. In contrast, the *O/W* emulsions like those claimed have superior feelings on the skin, for example refreshing feel and reduced

stickiness. Accordingly, Applicants again submit that the *W/O* type emulsified cosmetic compositions of Otsuka alone or in combination with Masashi, do not disclose or suggest the claimed *O/W* emulsions having such enhanced properties.

Thus, Applicants submit that the combination of Masashi and Otsuka does *not* render obvious the claimed invention for at least the foregoing reasons. As such, Applicants request withdrawal of the obviousness rejection of record over the combination of Masashi and Otsuka.

Conclusion

For the reasons discussed above, Applicants submit that all now-pending claims are in condition for allowance. Applicants respectfully request the withdrawal of the rejections and passage of this case to issue.

Respectfully submitted,

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